

# Administrative Adjudication\*

## Section 1.2

### Development of Due Process

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<b>Development of due process</b>	The concepts embodied in the phrase “due process of law” are not new. As early as 1215 A.D., they were clearly expressed in the Magna Carta (Latin for the ‘Great Charter’), a document signed by King John of England guaranteeing he would not execute or jail his subjects, nor seize their property unless done according to the “law of the land.” In time, this concept grew to be called “due process” and became one of the cornerstones of American jurisprudence.
<b>Procedural due process</b>	As a result of the phenomenal growth of administrative agencies, several dramatic developments in constitutional law have occurred, particularly in the area of “procedural due process.” Although much has been written concerning procedural due process, the term is often used with little understanding of its origin and tremendous impact upon the activities of governmental agencies.
<b>“Due process of law” today</b>	Today, due process of law is embodied in the language of the Fifth and Fourteenth Amendments of the United States (U.S.) Constitution, which provide that neither the federal government nor the states shall “deprive any person of life, liberty, or property, without due process of law.” In its most elementary sense, due process means an orderly proceeding adapted to the nature of the case, a proceeding in which the individual receives adequate notice of a proposed governmental action, and has the opportunity to be heard and defend his or her conduct. In essence, due process is fundamental fairness.

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## Development of Due Process, Continued

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**Court's  
primary focus  
of "due  
process"**

Initially, the primary focus of the court in the area of due process related to judicial proceedings. But recent U.S. Supreme Court decisions, such as Goldberg v. Kelley, Morrissey v. Brewer, and Wolff v. McDonnell, have clearly established that due process is in no way limited to judicial proceedings, but extends to every case in which an individual may be deprived of life, liberty or property, whether the proceeding be judicial or administrative in its nature. The due process clause has as its fundamental goal, the protection of citizens from arbitrary governmental interference with their guaranteed constitutional rights.

Prior to 1970, the U.S. Supreme Court was reluctant to recognize due process protections unless a case involved the deprivation of a "right." If the deprivation consisted of what the Court termed a "privilege," due process protections were not to be afforded.

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**Morrissey v.  
Brewer case**

Morrissey v. Brewer was a dramatic rejection of this distinction, holding that due process applies whenever an individual is being subjected to a "grievous loss." In that case, the U.S. Supreme Court concluded the loss of conditional liberty enjoyed by a parolee was a grievous loss, and was, therefore, entitled to due process of law before being deprived of this conditional liberty. However, the Court did not find the existence of a right to be irrelevant. In fact, an individual must have a right to something (such as conditional liberty) before its loss may be said to be grievous, such that due process would apply.

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